

§ 404.390

husband's special payment is also reduced by the amount that the wife's government pension exceeds the full special payment.

(e) *Nonpayment of special age 72 payments when you are not residing in the United States.* No special payment is due you for any month you are not a resident of one of the 50 States, the District of Columbia, or the Northern Mariana Islands. Also, payment to you may not be permitted under the rules in § 404.463 if you are an alien living outside the United States.

[44 FR 34481, June 15, 1979, as amended at 49 FR 24116, June 12, 1984]

LUMP-SUM DEATH PAYMENT

§ 404.390 General.

If a person is fully or currently insured when he or she dies, a lump-sum death payment of \$255 may be paid to the widow or widower of the deceased if he or she was living in the same household with the deceased at the time of his or her death. If the insured is not survived by a widow or widower who meets this requirement, all or part of the \$255 payment may be made to someone else as described in §§ 404.392 and 404.393.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21929, May 16, 1983]

§ 404.391 Who is entitled to the lump-sum death payment as a widow or widower who was living in the same household.

You are entitled to the lump-sum death payment as a widow or widower who was living in the same household if—

(a) You are the widow or widower of the deceased insured individual based upon a relationship described in § 404.345 or § 404.346;

(b) You apply for this payment within two years after the date of the insured's death. You need not apply again if, in the month prior to the death of the insured, you were entitled to wife's or husband's benefits on his or her earnings record; and

(c) You were living in the same household with the insured at the time of his or her death. The term *living in*

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the same household is defined in § 404.347.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21929, May 16, 1983]

§ 404.392 Who is entitled to the lump-sum death payment when there is no widow or widower who was living in the same household—death occurs after August 1981.

(a) *General.* If the insured individual dies after August 1981 and is not survived by a widow or widower who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

(1) To a person who is entitled (or would have been entitled had a timely application been filed) to widow's or widower's benefits (as described in § 404.335) or mother's or father's benefits (as described in § 404.339) on the work record of the deceased worker for the month of that worker's death; or

(2) If no person described in (1) survives, in equal shares to each person who is entitled (or would have been entitled had a timely application been filed) to child's benefits (as described in § 404.350) on the work record of the deceased worker for the month of that worker's death.

(b) *Application requirement.* A person who meets the requirements of paragraph (a)(1) of this section need not apply to receive the lump-sum death payment if, for the month prior to the death of the insured, that person was entitled to wife's or husband's benefits on the insured's earnings record. Otherwise, an application must be filed within 2 years of the insured's death.

[48 FR 21929, May 16, 1983]

§ 404.393 Who is entitled to the lump-sum death payment when there is no widow or widower who was living in the same household—death occurs before September 1, 1981.

If the insured individual dies before September 1, 1981 and is not survived by a widow or widower who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

(a) If all or part of the burial expenses of the deceased incurred by a funeral home remain unpaid, the funeral home may receive the lump-sum death

payment to the extent of the unpaid expenses if—

(1) A person who has assumed the responsibility for paying these expenses applies for the lump-sum death payment within 2 years of the insured's death, asking that the payment be made to the funeral home; or

(2) At least 90 days have gone by since the death of the insured, no person has assumed responsibility for paying the burial expenses, and the funeral home director or other official of the funeral home applies for the payment.

(b) If all the burial expenses of the insured that were incurred by a funeral home have been paid, and any part of the lump-sum death payment remains, it may be paid to a person who paid these burial expenses and who applies for the payment within 2 years of the insured's death.

(c) If the body of the deceased is not available for burial, but expenses were incurred in connection with a memorial service or any other item for which expenses are customarily incurred in connection with disposing of a deceased's remains, the lump-sum death payment may be paid to a person who paid the expenses and applies for the payment within 2 years of the insured's death.

(d) If any part of the lump-sum death payment remains after payments have been made under paragraphs (a), (b), and (c) of this section, that part of the payment may be made to a person who applies within 2 years of the insured's death and who has paid other expenses of a burial in the following order of priority—

(1) Expenses of opening and closing the grave;

(2) Expenses of providing the burial plot; and

(3) Any remaining expenses in connection with the burial.

[44 FR 34481, June 15, 1979; 44 FR 56691, Oct. 2, 1979. Redesignated and amended at 48 FR 21929, 21930, May 16, 1983]

§ 404.394 Who is entitled to the lump-sum death payment when burial expenses are paid from the deceased's funds.

If funds of a deceased person were used to pay any of the burial expenses for which payment of the lump-sum

can be made under the rules in § 404.393, the deceased person's estate may be entitled to the lump-sum death payment. If you apply for the payment on behalf of a person's estate, you must show you are the legal representative (administrator or executor) of the estate. If there is no legal representative and none will be appointed, you must agree to divide the payment among those who have a right to it under State law, or under foreign law, that applies where the deceased had his or her permanent home at death. We may also require that you get written approval to receive the payment from any of the deceased's closest relatives who are available. A person's closest relatives follow this order: widower or widow; children and the children of any deceased children; parents; brothers and sisters and the children of any deceased brothers and sisters; and other relatives by blood or adoption.

[44 FR 34481, June 15, 1979. Redesignated and amended at 48 FR 21929, 21930, May 16, 1983]

§ 404.395 Who is not entitled to the lump-sum death payment.

The following persons and organizations are not entitled to the lump-sum payment—

(a) The U.S. Government or a foreign government;

(b) Any person who has received or will receive repayment from any other source for the burial expenses he or she paid;

(c) Persons and organizations who are required by a contract to pay the burial expenses except for a tax-exempt, nonprofit home for the sick or aged that paid for burial of a deceased resident or guest or a tax-exempt, nonprofit fraternal organization that paid a member's burial expenses not covered by an express contract;

(d) An employer or organization that paid burial expenses of an employee or member under a plan, system, or general practice other than a home for the sick or aged or a fraternal organization mentioned in paragraph (c) of this section; and

(e) A person or organization that furnished goods or services for the burial unless the goods or services were furnished by—